SHALL FREE COLLECTIVE BARGAINING BE MAINTAINED?

By Carl H. Mote,
Indianapolis, Indiana.

During the years I was enrolled as a student in college I was a member of an intercollegiate debate team which had the affirmative of the proposition, "The power of the federal government should be extended over corporations engaged in interstate commerce." It was not until long after the debate was held and my team had been beaten that I came to realize we had overlooked our very strongest argument, namely: That the power of Congress *had already been* extended over corporations engaged in interstate commerce and that the act creating the Interstate Commerce Commission by which this was definitely accomplished was a matter of political and social necessity—an evolution of our industrial society. I am not going to overlook a similar opportunity to call attention at the outset of this paper to the spread of collective bargaining during the past fifty years and to cite this unbroken growth of its popularity as a very plausible consequence of its inherent merit—as a tangible reason why collective bargaining ought to be maintained.

As a parallel of the case I have in hand, knowing that people must eat, I might as well be charged with the task of contending for the maintenance of bake-shops, or, knowing they are possessed with religious and educational instincts, of contending for the maintenance of churches and schools. Collective bargaining is based upon the group instincts of man but in this age it is also a normal product of our industrial society which, itself, tends to promote group or class consciousness.

Free collective bargaining means undoubtedly that the differences between capital and labor, employer and employe, shall be solved, if solved at all, by those agencies which capital and labor, employer and employe, working together and alone, are able to provide. In a practical sense, *free* collective bargaining implies the use of the *trade agreement* and an unbroken and unending effort

at organization until there is a complete federation of all workers joined together for a common purpose. We may well doubt whether complete amalgamation of the workers is attainable and it is best perhaps to consider collective bargaining in terms of present or proximate limitations. We have to ask ourselves whether the success of collective bargaining as applied approximately to 15 per cent of the workers has fully justified itself.

As a matter of fact, *free* collective bargaining is not now being maintained to any appreciable extent. Collective bargaining cannot be said to be wholly *free* where state conciliation and arbitration boards are accessible to parties when collective bargaining has failed, or are likely to intervene on their own motion when differences have reached the acute state. It cannot be said, in the circumstances, that collective bargaining is *free* when hours of labor, working conditions and even wages are fixed by law. What we mean rather is collective bargaining, free from unreasonable legal restraints and reasonably free from the operation of other devices in the same field.

We have hours-of-service laws in most of the states, federal hours-of-service acts, a great body of laws, federal and state, governing working conditions, and finally minimum wage laws in seventeen or eighteen states applying to women and minors. This mass of legislation may be regarded as supplementary to the achievements of collective bargaining or as evidence of a distinct and separate movement in the direction of greater state interference with labor and industry. We may regard the tendency to fix wages, hours and conditions of service by law as a supplemental phase of collective bargaining or as an alternative. In the measurement of any scheme we have to consider its operation from a threefold point of view, namely: the elevation of labor, the orderly development of industry and the peace of society. It is so with collective bargaining.

Turning to the realm of mere theories that fail to work, we have one setting forth an ideal condition in which capital and labor would coöperate for their mutual benefit. This theory appears feasible enough until we remember that capital's wonted policy is to pay out in wages precisely what is demanded to maintain production at a given rate, and no more; or that labor's wonted policy is to collect the greatest wage obtainable for a given service. It is because of the conflict that arises at this point of difference

that employes organize to do collectively what experience has proved they cannot do individually. It is because of this point of difference that collective bargaining has become an established fact in many industries.

In the realm of mere theories, we have another which takes into the assumed partnership between capital and labor, a third which, it is maintained, is most potent of all—the public. "It is therefore necessary," says one writer, "for employers to join with employers, for employes to join with employes, and these two with the people to form a triumvirate—and then get busy and take the 'dust' out of industry."

Actually, this statement is not far from a practical solution of the problem, although the writer failing to specify just what he expects the "people" to do, one is left to speculate with regard to the exact nature of their part. The truth is that the "people," except as they have been spurred on by the proponents of trade unionism, have not accomplished anything of great moment or figured prominently as a solving factor. The "people" make a great fuss when the street cars stop running. They denounce Mother Jones or the railroads or both, when coal reaches a prohibitive price and sneer at the labor picket because he does not seem to be as busy as the "people" think they are. Otherwise, we have to offer on behalf of the "people" the famous Adamson law, passed during the last session of Congress with the avowed purpose of avoiding a strike but in the light of recent developments rather of postponing it until after a presidential election. This law, the only purpose of which seems to have been a temporary political advantage sought by the party in power, is promised a legal attack equal to the stoning of Achan.

Nevertheless, a wiser and more vigilant part in the solution of our industrial problems—in the elevation of labor, promotion of industrial progress and the establishment of peace—certainly must rest with the "people," if we are to proceed satisfactorily.

From the very nature of the service performed, collective bargaining cannot prove very satisfactory as a method of adjusting the differences between capital and labor in the field of public utilities. Here regular, prompt and adequate service is of such great importance to *all* the people that no lapse due to strikes or lockouts ought to be allowed. Of course, the employes of a

street car company, for instance, have a right to strike when the operating executives of the company decline to hear the grievances of the men from their representative committees or to submit differences that cannot be adjusted otherwise to arbitration. Likewise, the operating executives of a street car company have a right to deny the demands of their employes when the latter refuse to submit persistent differences to arbitration, as the railroad brotherhoods did prior to the enactment of the Adamson law. It is at these points especially that the "people" should exercise their inherent power—power that exists by virtue of the character of enterprise concerned. The "people" ought to intervene for their own general good and they ought to be possessed with machinery adequate to effect an adjudication.

Not that the state will ever be able to compel men to work but that in extreme cases when its awards have been made, the employes of a public utility may have the option of accepting the award or of having their places filled by other men. Undoubtedly, the state would appear to better advantage in using its police power to enforce its own award or order than it does now when the police power is invoked to protect "strike breakers" employed by a privately-owned enterprise even though the public convenience may be involved in both cases.

Fortunately, we already have the necessary machinery for the adjudication of differences between employer and employe in the field of public utilities. The federal government maintains the Interstate Commerce Commission and practically all the states maintain public service commissions. In their respective jurisdictions, these bodies already have administrative power approximating that of wage boards. They already are empowered to fix reasonable rates for service, to determine a standard of service and to supervise and authorize stock and bond issues. Wages, hours and conditions of service of the men employed in the operation of a public utility are so closely related to the element of service from the consumer's standpoint that no regulatory body can successfully control the latter without regulation of the former. Moreover, what is more logical as a corollary of the proposition that regulatory bodies in the field of public utilities empowered to supervise rates, service, and capital also should supervise wages, which enter into these other elements?

Eighteen states already maintain minimum wage boards with jurisdiction over the wages of women and minors and this further grant of power to the Interstate Commerce Commission and to the public service commissions of the states ought to be upheld under our present constitutions on practically the same grounds as minimum wage laws.

Outside the field of public utilities, it does not appear that we shall be able to find any method of adjudicating the differences between employer and employe equal to collective bargaining. Within the field of public utilities, there ought to be as little interference on the part of the state with employer and employe as we may find consistent with the proposition that no lapse of service is to be tolerated.

There can be no doubt that the fight of the trade unions of this country to establish the principle and spread the practice of collective bargaining properly deserves to rank as the most potent influence extant for shorter hours, higher wages and better working conditions. Progress in those trades where collective bargaining has become an established fact has been especially marked.

Many other influences, it is true, have functioned to the same end but the trade union movement stands out conspicuously as greatest of all. It is upon the principle of collective bargaining that the trade union movement rests in this country and we shall, therefore, have to bear in mind that the achievements of the one are achievements of the other; that the history of the one is the history of the other. We shall have to bear in mind also that the trade unions with collective bargaining as their *shibboleth* "have had to fight the lawmakers and the judges, the police power and those who usurped police power," and that "nothing has been won without a struggle."

In behalf of collective bargaining, it may be urged that three million American workmen, more or less, by virtue of their organization for that purpose, have been able to maintain a wage scale far above that of the unorganized trades; that the evils of child and woman labor have been effectively checked or eradicated; that hygienic, sanitary and safety laws have been wrung, one by one, from unwilling legislative bodies; that the standard of intelligence and of enlightened citizenship within the organized trades has risen year by year; that the membership, being trained to service in groups,

has learned the lesson of obedience, discipline and team work; and finally that the unorganized trades, the 85 per cent of American workmen, have benefited either directly or indirectly by what we may call the "tyranny of the minority." So far as the influence of collective bargaining is concerned as a factor for enlightened citizenship, for obtaining comfortable wages and sufficient leisure for recreation, it stands paramount in the field of industry.

The trade union movement may have failed to develop a sufficient number of skilled workmen for healthy industrial progress because of the collapse of the apprenticeship system, and therefore collective bargaining might be said to be responsible for having retarded our industrial development. The facts, however, are that our failure to train skilled workmen is due more to the direction of our industrial development, to the advent of machine production and of extreme specialization than anything else. Trade unionists frankly admit the failure of the apprentice system and in their active support of the movement for industrial education are doing everything possible to overcome what is being lost in the passing of apprenticeship.

Australian and New Zealand experiments—experiments carried on in an industrial society far less complex than our own—show conclusively that compulsory arbitration is merely a name; that the state in extreme crises is unable to compel men to work when otherwise disposed; that actually the device is a failure when applied to cases where it is most needed. Compulsory conciliation and arbitration "does not compel, it does not conciliate, neither does it arbitrate. Like the peddler's razor, it was made to sell and not to shave." Compulsory arbitration is opposed by organized labor and by organized and unorganized employers. In the general field of industry it will not operate because men cannot be compelled to work against their will and besides it is an instrument of doubtful merit even though it might be made effective.

Compulsory investigation, a device used in Canada since 1907, where it applies to transportation, communication, mining, gas, light, water and power enterprises, is open to practically every objection to be urged against compulsory arbitration and in theory at least lacks the advantages that would flow out of compulsory arbitration, assuming that the parties to an industrial controversy could be compelled to arbitrate their differences and to abide by the

awards of a board appointed against their will. Nine years' experience with compulsory investigation in Canada shows a high percentage of failure to avert strikes as well as numerous instances where the law was disregarded altogether in calling strikes. It is quite as objectionable to organized labor as compulsory arbitration. President Wilson's program announced in connection with his recommendation of the Adamson bill, and renewed in his recent message to Congress, which includes the enactment of a law after the plan of the Canadian Industrial Disputes Investigation Act, was scarcely published in the newspapers until Mr. Gompers attacked it. Obviously, Mr. Gompers was waiting until after the election for the main assault. The Canadian law, framed obviously on the admitted principle that men cannot be made to work when they will otherwise, does, as a matter of fact, undertake to compel them to work during a certain period, pending investigation by official authority, and to that extent is open to the same objection as compulsory arbitration.

Of course, it is legally possible to fix wages, hours and working conditions directly by law, but manifestly this is an impossible task in practice and one altogether beyond the normal functions of legislative bodies. Until the enactment of the Adamson law, it was definitely understood that organized labor and the American Federation of Labor, especially, were unalterably committed to the principle of collective bargaining and unalterably opposed to all other methods of regulating wages and hours.

The 1915 convention of the American Federation of Labor defeated a resolution of socialist origin advocating direct legislation to obtain the eight-hour day and reaffirmed a resolution adopted at the 1914 convention, of directly opposite purport. In part, this resolution was as follows:

> The American Federation of Labor, as in the past, again declares that the question of the regulation of wages and hours should be undertaken through trade union activity, and not to be made subjects of laws through legislative enactment. It cannot be overemphasized that the wage-earners must depend upon their economic organizations for securing a shorter work day. . . . . To secure a shorter work day by any other method makes it necessary for the wage-earners to delegate to other authorities other things which vitally affect them, and which constitute a limitation upon their activities and their rights, and thus finally lessen their freedom.

It is a fact that in so far as legislative bodies assume the function of limiting hours and fixing wages, collective bargaining will have to be given up and it is in the railroad train service that collective bargaining has attained the zenith of its power. The Adamson law was badly framed and in all probability present trade agreements will be abrogated or modified to suit the railroads. Worst of all, conditions attending the passage of the Adamson act have weakened the brotherhoods before the public and in the event a strike is finally called there will be a general want of sympathy with the strikers' cause. Out of all this, however, we may hope that the Interstate Commerce Commission may be charged with complete jurisdiction over wages and hours in the railroad service, a natural and inevitable disposition of the problem.

There are strong indications that the railroad brotherhoods, who would now be violently opposed to surrendering any part of the wage-bargain function, took a step in accepting the Adamson law from which there is no returning. Having already estranged a considerable number of trainmen in an effort to coerce them into blind support of the Adamson act, the brotherhood leaders will have serious difficulty now in effecting an orderly retreat.

The railroad brotherhoods are conspicuously a non-striking organization. This is their history. It is true that they have engaged in strikes, but a strike nevertheless is the exception. Notwithstanding the seriousness of the indictment and the hesitancy with which it is brought, I am persuaded that the strike vote preceding the recent surrender to political domination by Congress and the President of the United States, was a "frozen" vote, and that the brotherhoods surrendered only because they believed it would, may I say, save their own hides? It is a regrettable fact that the brotherhood leaders were willing to practice a colossal deceit on their membership. Finally, it may be said in all fairness and justice, that they deserve what they eventually will receive, the condemnation of their own membership and of the public generally for delivering over their organization to a political party as a part of a political bargain. The condition in which the brotherhoods find themselves suggests the beginning of an attempt to handle the wage question in the field of public utilities in an altogether new way. The beginning might as well be made with the railroads doing an interstate business.

As a practical proposition, outside the field of public utilities, we have nothing that can take the place of collective bargaining, and we shall therefore have to content ourselves with whatever advantages the trade agreement offers and provide ourselves against whatever disadvantages it entails. To this end we ought to legalize fully employers' and employes' associations and to recognize them as our greatest security against destructive labor struggles. We ought to encourage associations of both groups and extend to them whatever protection the law can afford. In this event, we shall have a democratic approach to the solution of our problem and therefore a reasonably satisfactory solution because the parties most interested will have had a voice in reaching the solution.